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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 ROBERT YOUNG,  
12 Petitioner,  
13 v.  
14 M. BITER,  
15 Respondent.  
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Case No. CV 16-00520 JLS (RAO)

ORDER ACCEPTING FINDINGS,  
CONCLUSIONS, AND  
RECOMMENDATIONS OF UNITED  
STATES MAGISTRATE JUDGE

17 On July 8, 2016, the United States Magistrate Judge issued a Report and  
18 Recommendation, recommending (1) that the Petition for Writ of Habeas Corpus  
19 filed by Petitioner Robert Young (“Petitioner”) be denied, and (2) that this action be  
20 dismissed with prejudice. On July 26, 2016, Petitioner, proceeding *pro se*, served  
21 his objections to the Report and Recommendation. The Magistrate Judge’s Report  
22 and Recommendation sufficiently addresses the bulk of the arguments Petitioner  
23 makes in his objections. The Court, however, does address one argument raised  
24 therein.

25 Petitioner objects to the Magistrate Judge’s recommendation, in part, because  
26 *Miller v. Alabama*, — U.S. —, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the  
27 case announcing the right Petitioner relies on, was not deemed a substantive rule of  
28 constitutional law with retroactive effect until the United States Supreme Court’s

1 January 25, 2016, decision in *Montgomery v. Louisiana*, — U.S. —, 136 S. Ct.  
2 718, 193 L. Ed. 2d 599 (2016). Presumably, therefore, Petitioner believes that the  
3 Antiterrorism and Effective Death Penalty Act (“AEDPA”)’s limitations period did  
4 not start to run until January 25, 2016, making his March 22, 2016, petition timely.

5 Under 28 U.S.C. § 2244(d)(1)(C), AEDPA’s one-year statute of limitations  
6 begins to run on “[t]he date on which the constitutional right asserted was initially  
7 recognized by the Supreme Court, if the right has been newly recognized by the  
8 Supreme Court and made retroactively applicable to cases on collateral review[.]”  
9 The Supreme Court has stated that the foregoing text “unequivocally identifies one,  
10 and only one, date from which the 1-year limitation period is measured: ‘the date on  
11 which the right asserted was initially recognized by the Supreme Court.’” *Dodd v.*  
12 *United States*, 545 U.S. 353, 357, 125 S. Ct. 2478, 162 L. Ed. 2d 343 (2005)  
13 (construing parallel provision in 28 U.S.C. § 2255 and noting that “[w]hat Congress  
14 has said . . . is clear: An applicant has one year from the date on which the right he  
15 asserts was initially recognized by th[e United States Supreme] Court”).

16 *Miller v. Alabama* was decided on June 25, 2012. Nearly four years later, on  
17 March 22, 2016, the Petition was filed. As the Magistrate Judge noted, Petitioner is  
18 not entitled to statutory or equitable tolling. Thus, the Petition is untimely. *Dodd*,  
19 545 U.S. at 357; *see also Allen v. LeGrand*, 2014 WL 4162261, at \*3 (D. Nev. Aug.  
20 20, 2014) (noting that when “§ 2244(d)(1)(C) applies, the start date of the one-year  
21 period is the date that the Supreme Court initially recognizes the new constitutional  
22 right, not the date that the right is determined to apply retroactively[.]” and finding  
23 that even if *Miller* applied, § 2244(d)(1)(C)’s one-year period had already expired  
24 because petitioner mailed his petition “more than a year after the *Miller* decision”).

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1           Given the foregoing and pursuant to 28 U.S.C. § 636, the Court has reviewed  
2 the Petition, all of the records and files herein, the Magistrate Judge's Report and  
3 Recommendation, and Petitioner's objections. The Court accepts and adopts the  
4 findings, conclusions, and recommendations of the Magistrate Judge.

5           IT IS ORDERED that the Petition is denied and Judgment shall be entered  
6 dismissing this action with prejudice.

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9 DATED: September 12, 2016



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JOSEPHINE L. STATON  
UNITED STATES DISTRICT JUDGE